

APPENDIX C: COALITION'S 2004 COMMENTS

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Implementation of Pay Telephone Reclassification)	
and Compensation Provisions of the)	
Telecommunications Act of 1996)	
)	
Martha Wright, Dorothy Wade, Annette Wade,)	
Ethel Peoples, Mattie Lucas, Laurie Nelson,)	
Winston Bliss, Sheila Taylor, Gaffney &)	CC Docket 96-128
Schember, M. Elizabeth Kent, Katharine Goray,)	
Ulandis Forte, Charles Wade, Earl Peoples,)	
Darrell Nelson, Melvin Taylor, Jackie Lucas,)	
Pater Bliss, David Hernandez, Lisa Hernandez)	
and Vendella F. Oura)	

**COMMENTS OF THE AD HOC COALITION FOR THE RIGHT TO COMMUNICATE
REGARDING PETITION FOR RULEMAKING OR, IN THE ALTERNATIVE,
PETITION TO ADDRESS REFERRAL ISSUES IN PENDING RULEMAKING**

Laura K. Abel
Patricia Allard
Kirsten D. Levingston
Kele Williams
Brennan Center for Justice
at New York University School of Law
161 Avenue of the Americas, 12th Floor
New York, N.Y. 10013
(212) 998-6730

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The Ad Hoc Coalition for the Right to Communicate ("Coalition"), the members of which are listed below, submits these Comments pursuant to the Public Notice regarding the Petition For Rulemaking or, in the Alternative, Petition To Address Referral Issues In A Pending Rulemaking ("*Wright Petition*") issued by the Federal Communications Commission ("FCC" or "Commission") on December 31, 2003. In these Comments, the members of the Coalition respectfully urge the Commission to address anticompetitive practices that result in excessive telephone service rates and poor quality service for people incarcerated in privately administered prisons, and also to address collect call-only policies at those prisons.

I. The Interest of the Ad Hoc Coalition for the Right to Communicate

The Coalition, consisting of 61 individuals and organizations, was formed to provide the Commission with information to help it consider whether to address anticompetitive practices that result in excessive long distance collect call rates at privately administered prisons.

The Coalition is composed of a diverse group of people with an intense interest in this issue. It includes four categories of people who need to communicate with people in prison, and who are consequently adversely affected by the anticompetitive practices addressed by the *Wright Petition*:

- 1) parents, siblings and other family members of people in private or public prisons.
- 2) attorneys who must communicate with incarcerated people they represent in criminal cases, immigration cases, and civil cases.
- 3) social service agencies, some of which accept collect calls from people in prison, and some of which cannot afford to do so.
- 4) others, such as a Zen Buddhist priest who has had to refuse calls from people in prison seeking pastoral counseling, and a retired college professor who bears the expense of accepting collect calls from people in prison who she is mentoring for post-graduate degrees.

The signatories also include several organizations dedicated to improving the criminal justice system and to removing impediments to incarcerated people communicating by telephone with families, attorneys and others. The importance of this issue to many sectors of society is clear from the variety of advocacy organizations that have joined the Coalition, including the faith-based Justice Fellowship, the grassroots organization Justice Works!, and many others.

The identity and specific interest of each member of the Coalition is explained in greater detail in Appendix A.

II. Introduction

A. The *Wright Petition*

In November, 2003, Martha Wright and twenty other people who either are incarcerated or receive long-distance collect calls from incarcerated people (including families, lawyers, and others) filed a petition requesting that the Commission take action regarding telephone service for people incarcerated in private prisons. The *Wright Petition* asks the Commission to “prohibit exclusive inmate calling service agreements and collect call-only restrictions at privately-administered prisons and require such facilities to permit multiple long distance carriers to interconnect with prison telephone systems,” and that the FCC “require inmate service providers to offer debit card or debit account service as an alternative to collect calling services.”¹ The *Wright Petition* is accompanied by an affidavit by Douglas A. Dawson, a telecommunications expert with extensive experience providing long distance calling services.

The *Wright Petition* describes the current regime under which most prisons contract for telephone services for incarcerated people. It explains that prisons generally enter into exclusive contracts with telecommunications carriers, with the carrier paying a large “commission” to the prison, which it recoups by charging very high rates for calls by incarcerated people.² It explains that many prisons limit incarcerated people to making collect calls, which further drives up the cost of their calls.³ In the accompanying expert affidavit, Douglas Dawson explains that neither

¹ *In the Matter of Wright Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, CC Docket 96-128, at 3-4.

² *Wright Petition* at 2.

³ *Id.* at 4.

the exclusive contracts, nor collect call-only requirements, are necessary to satisfy prisons' interests in maintaining security.

On December 31, 2003, this Commission issued a Public Notice seeking comments on the *Wright Petition*.⁴ In the Public Notice, the Commission noted that the *Wright Petition* "raises important issues" that the Commission will consider in the course of its *Inmate Payphone Rulemaking*, an ongoing proceeding regarding the provision of payphone service for people in prison. The Commission instructed interested parties to file comments no later than 20 days after publication of the notice in the Federal Register; that deadline was later extended to March 10, 2004.⁵ The Coalition submits the instant Comments in response to this request.

B. Scope of These Comments

These Comments focus on the effects of three aspects of the way many private and public prisons arrange for telephone services for the people they incarcerate: 1) the high cost of collect calls by incarcerated people, 2) collect call-only policies, and 3) service problems that companies with exclusive contracts have no incentive to fix.

These Comments focus on the exclusive long-distance telecommunications service contracts entered into by private prisons and collect call-only policies, because that is the subject of the *Wright Petition*. It is important to note, however, that many publicly run prisons enter into similar long distance telecommunications services contracts, with similar effects.

These Comments focus on the ways in which exclusive telecommunications service contracts and collect call-only policies affect people in prison, their families and attorneys, and society in general. In order to assist the Commission in assessing these effects, the Coalition

⁴ See 69 Fed. Reg. 2697 (January 20, 2004).

⁵ 69 Fed. Reg. 7615 (Feb. 18, 2004).

submits the declaration of Dr. Creasie Finney Hairston, the Dean of the Jane Addams College of Social Work at the University of Illinois at Chicago, which is attached as Appendix B.

The breadth of the Coalition makes clear that the families and attorneys on which the Comments focus are just two of the many categories of people and organizations affected by these aspects of prison telecommunications systems. The Statements of Interest included in Appendix A describe how the prison telecommunications systems also affect pastoral counselors, educators, social service agencies, and others.

C. Private Prisons

The issues addressed in the *Wright Petition*, and in these Comments, affect a large number of people. As of the end of 2002, there were 93,771 people incarcerated in private correctional facilities around the country.⁶ This constituted 5.8% of all people in state custody and 12.4% of all people in federal custody.⁷ The current number of people in private prisons is likely even higher: between 1995 and 2000 there was a 507% increase in the number of people housed in private correctional facilities each day, and a 247% percent increase in the number of private correctional facilities.⁸ The people incarcerated in private prisons tend to pose a relatively low security risk: in 2000, approximately 75% of private correctional facilities were low or minimum security facilities.⁹

⁶ U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2002* (July 2003), available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/p02.txt>.

⁷ *Id.*

⁸ U.S. Department of Justice, Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities, 2000* p. 16 (Aug. 2003).

⁹ *Id.*

There is a vast array of types of private correctional facilities. The federal Bureau of Prisons, the federal Bureau of Immigration and Customs Enforcement (“BICE”), and many state and county governments send people to private facilities.¹⁰ Juveniles, women, and immigrants detained for overstaying their visas are just some of the people incarcerated in these facilities.

Many people incarcerated in private prisons are far from their families, attorneys, and other people with whom they wish to communicate. The nation’s largest private prison company, Corrections Corporation of America, incarcerates over 6,000 people in private prisons outside their home states.¹¹ The distances are often very long. For example, more than 1,400 Hawaiians are incarcerated in Corrections Corporation of America prisons in Oklahoma and Arizona.¹² More than 800 Alaskans – a number of whom are represented by Coalition member Averil Lerman – are incarcerated in a Corrections Corporation of America prison in Florence, Arizona, more than 2,000 miles away from their homes.¹³ And Vermont has a contract to send 700 people to private prisons in Kentucky and Tennessee.¹⁴ For these people, communicating by

¹⁰ See Corrections Corporation of America, *CCA at a Glance*, available at <http://www.correctionscorp.com/aboutcca.html> (“The company manages more than 62,000 inmates including males, females and juveniles at all security levels and does business with all three federal corrections agencies, almost half of all states, and more than a dozen local municipalities.”). The federal Bureau of Prisons contracts for private companies to incarcerate approximately 8,500 people. Mary Zahn & Richard P. Jones, *Bill Would Keep Federal Cash, Inmates Out of Private Prisons*, Milwaukee J. Sentinel (Jan. 24, 2000).

¹¹ David Crary, *Overburdened, 11 States Export Inmates*, Associated Press (Jan. 18, 2004).

¹² *Id.*

¹³ See Lerman Statement of Interest. All Statements of Interest of Coalition members are attached to this document as Appendix A.

¹⁴ Crary, *supra* n.11. Additional examples include the Corrections Corporation of America’s Torrance County Detention Center in New Mexico, which takes inmates from the District of Columbia; and Corrections Corporation of America’s Prairie Correctional Facility in Minnesota, which takes inmates from Wisconsin and North Dakota. See Corrections Corporation of

telephone is essential, because it is impractical, or even impossible, for families and attorneys to visit.

The many immigrants who the federal BICE has detained in private prisons – many of whom have not been charged with any crimes but are simply seeking asylum in this country¹⁵ – face particular difficulties communicating with their families, attorneys and others. As of the end of 2002, BICE had placed 1,936 immigration detainees in private facilities under exclusive contract with BICE and another 11,317 in federal, state and local penal institutions, some of which were privately operated.¹⁶ Many of those facilities are located far away from the detainees' homes and lawyers. For example, Coalition member Laura Kelsey Rhodes, an immigration attorney, says that many of her clients are detained at rural facilities so far from both her office and their homes that a visit from family or an attorney is a day-long event.¹⁷

Telephone communication is also particularly essential for the 40% of the U.S. prison population that is functionally illiterate.¹⁸ When the families or attorneys of these people are too distant or too impoverished to visit, there is simply no way to communicate with them.

America, *Facilities List*, available at <http://www.correctionscorp.com/facilitieslist.html> (last accessed February 3, 2004).

¹⁵ As of the end of 2002, the BICE was incarcerating 21,065 people, 8,577 of whom had not been charged with any crimes. U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2002* (July 2003), available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/p02.txt>.

¹⁶ *Id.*

¹⁷ See Rhodes Statement of Interest. Likewise, the Washington, D.C.-based Capital Area Immigrants' Rights Coalition finds that the jails where it visits immigration detainees are located anywhere between 45 minutes and four hours away from its office. See Capital Area Immigrants' Rights Coalition Statement of Interest.

¹⁸ The Center on Crime, Communities & Culture, *Education as Crime Prevention: Providing Education to Prisoners*, Research Brief: Occasional Paper Series 2 (Sept. 1997).

D. Summary of the Effects of Exclusive Contracts and Collect Call-Only Policies

These Comments focus on the effects of three aspects of the way many private and public prisons arrange for telephone services for the people they incarcerate: 1) cost, 2) collect call-only policies, and 3) poor service. All of these problems are largely the result of the exclusive nature of telecommunications service contracts.

1. Cost

When prisons enter into exclusive contracts with telecommunications carriers, one frequent result is that those who accept collect calls from incarcerated people pay shockingly high rates. Here are just a few examples:

- A retired couple living on a fixed income in New Hampshire paid \$5,000 in 2003 in order to accept collect calls from their daughter incarcerated in New York.¹⁹
- A man living in Iowa pays \$18.89 for a 15-minute collect call from a person in prison in Texas, adding up to monthly phone bills of between \$500 and \$700.²⁰
- The Office of the Appellate Defender in New York City and the Metropolitan Public Defender's Office in Davidson County, Tennessee each pay in excess of \$1,000 monthly to accept collect calls from their clients who are in prison.²¹
- A criminal defense lawyer is charged a minimum of \$14 for collect calls by people in prison in one facility, regardless of the length of the call.²²
- The public defender in Kern County, California paid \$460.51 for collect calls from clients in November, 2003 alone.²³

¹⁹ See Wojas Statement of Interest.

²⁰ See Klitgaard Statement of Interest.

²¹ See Office of the Appellate Defender Statement of Interest; Metropolitan Public Defender's Office Statement of Interest.

²² See Rhodes Statement of Interest.

²³ See Arnold Statement of Interest.

- An attorney who accepts long distance collect calls from a person in prison in Cumberland, Maryland, reports that he has been paying a \$3.00 connection fee, and 45 cents each minute.²⁴

The cost of these calls would likely be much lower if telecommunications service providers had to compete with each other for incarcerated people's business, and if incarcerated people had the option of calling direct instead of making collect calls. The bloated nature of these charges is evident when you consider that debit card calls by people incarcerated in prisons operated by the federal Bureau of Prisons cost just 17 cents per minute.²⁵

2. Collect Call-Only Policies

The rates for collect calls are typically higher than for debit card or debit account calls. Denying prison inmates the alternative of debit card or debit account calling thus is another factor inflating the cost of inmate telephone services.

Even if the cost of collect calls from prison were lower, the inability to make direct calls (for example, by using debit cards) would still pose insuperable obstacles to communication for some incarcerated people. As many members of the Coalition have found, people calling collect cannot leave messages on answering machines or voice mail, cannot navigate through electronic phone systems to reach individual extensions, and often cannot place calls to cellular telephones.

3. Service Problems

The members of the Coalition experience serious service problems, which they believe would be ameliorated if telecommunications carriers competed for carrying calls from people in prison and if prisons offered the option of making direct calls instead of collect calls. For

²⁴ See Dunbaugh Statement of Interest.

²⁵ U.S. Department of Justice, Federal Bureau of Prisons, Memorandum For All Institution Controllers All Trust Fund Supervisors, from Michael A. Atwood, Chief, Trust Fund Branch, Trust Fund Message Number 18-02 (Feb. 8, 2002) at 2.

example, some exclusive prison telecommunications carriers erect onerous barriers to connecting collect calls to anyone whose own telecommunications carrier does not have a contract with the prison's carrier. In some instances, the exclusive carrier requires people wanting to receive collect calls from a particular prison to set up a special account and pay an up-front deposit – sometimes as much as \$50.²⁶ This is a prohibitive amount for some low-income families. It is particularly burdensome because if the incarcerated person from whom the family member, lawyer or other account holder wants to accept calls leaves that prison, it can be difficult or impossible to recover the remainder of the deposit.²⁷ In other instances, the exclusive carrier requires people wanting to receive collect calls from a particular prison to provide extensive financial and personal information.²⁸ People who do not know about these requirements, or who have not yet set up an account with the particular carrier holding an exclusive contract with a given prison, simply are unable to receive any calls from that prison.²⁹ This poses particular obstacles for people who have recently been placed in a particular prison, or who are trying to contact a new attorney or social services provider for the first time.

²⁶ See Crane Statement of Interest.

²⁷ *Id.*

²⁸ See, e.g., Holloway Statement of Interest; Teichman Statement of Interest; discussion of “Kathy” in section III, *infra*.

²⁹ See Canino Statement of Interest; Weber Statement of Interest; Rhodes Statement of Interest. See also John O’Brien, *AT&T Blocked Inmates’ Calls: Phone Company Did Not Inform Lawyer That Clients Were Trying to Reach Him*, Post-Standard (Syracuse, NY), Jan. 24, 2003, at B6 (describing blocks AT&T has placed on calls from jail with which it had exclusive service contract, to people whose phone providers do not have contract with AT&T).

As the Commission knows from previous proceedings, exclusive telecommunications service providers regularly employ problematic call blocking techniques.³⁰ Even when people are able to set up an account with a prison's exclusive provider, collect calls to them will often be blocked once their initial deposit has been used up.³¹ Moreover, members of the Coalition report many occasions on which exclusive prison telecommunications carriers have erroneously, and without notice, placed blocks on their telephones even though they have paid their bills or provided an advance deposit.³² Some carriers provide such poor service that even when a customer's bill has been paid, the carrier will place a block on his or her line unless the customer calls the carrier to say that the bill has been paid.³³ Sometimes exclusive carriers simply place

³⁰ *In re: Petition of Outside Connection, Inc.*, DA 03-874, Ms. Diane King Smith submitted comments describing these blocking techniques used by MCI:

- MCI blocks inmate calls, then requires the customer to pay a deposit or prepay all inmate calls.
- MCI blocks inmate calls then forces the citizen to change their long distance service to MCI in order for the block [to be] removed. The customers are told they will only be able to receive inmate calls if they change their long distance service to MCI.
- MCI blocks inmate calls when the current charges are considered "high", despite the customer having a good credit and phone history. The customer is required to pay the current charges (although the bill is not due) before the block is lifted.
- MCI blocks inmate calls and require[s] the customers to engage in a three-way conversation with their local telecommunications service provider to verify that their current bill has been paid. This practice may be repeated each month.
- MCI blocks inmate calls and requires the customer to provide a copy of their phone bill and a utility bill before the block will be lifted.
- Once the customers comply with the MCI requirements, they have to wait between 48 and 72 hours before the block is removed, and sometimes the block is still not removed and the citizen is back to square one again contacting MCI.
- Some customers receive duplicate bills for inmate calls from MCI and their local telecommunications service provider.

³¹ See Crane Statement of Interest.

³² See Office of the Appellate Defender Statement of Interest.

³³ See Teichman Statement of Interest; discussion of "Kathy" in section III, *infra*. The problem appears to stem primarily from inadequate communication between the prison's exclusive

blocks on lines they decide have accepted too many collect calls.³⁴ Often, the provider does not provide the customer with any notice that the block is in place, so that the customer only finds out when the incarcerated person who is trying to call is able to get word to someone else, who makes a direct call to the customer, alerting the customer of the problem.³⁵ When this happens, the customer generally has no idea why the block has been imposed or how to get it lifted.³⁶

telecommunications carrier and the carrier used by the people awaiting calls from the prison. In September, 2002, the *Providence Journal Bulletin* carried an article describing an incident in which Verizon, which had an exclusive contract with a Rhode Island correctional facility, blocked all calls to people who subscribed to Cox Communication's service. Verizon took this action because it believed – wrongly, it turned out – that it was not receiving compensation for calls to those people. See Timothy C. Barmann, *Verizon, Cox Dispute Blocks Phone Lines at Cranston, R.I., Prison*, Providence J. Bull. (Sept. 18, 2002).

³⁴ See Teichman Statement of Interest; discussion of “Kathy” in section III, *infra*.

³⁵ See Crane Statement of Interest; Office of the Appellate Defender Statement of Interest. See also John O'Brien, *AT&T Blocked Inmates' Calls: Phone Company Did Not Inform Lawyer That Clients Were Trying to Reach Him*, Post-Standard (Syracuse, NY), Jan. 24, 2003, at B6 (lawyer did not know that AT&T was blocking calls to him from people in jail; his phone service provider says, “Most attorneys wouldn't know until their clients in the jail complained.”).

³⁶ *Id.*

III. The Commission's Policy Allowing Exclusive Dealing Arrangements Severely Limits the Ability of People in Prison to Communicate With Their Families, Hurting Both Penological Interests and Public Safety

Exorbitant, commission-driven phone rates, made possible by exclusive dealing arrangements between private prison administrators and their long distance providers, make it unreasonably difficult for families to stay in contact with family members who are incarcerated. In some cases, the arrangements even make phone contact with family impossible. For families with incarcerated loved ones, the phone's ring provokes both delight and dread. It signals a chance to hear the voice of an incarcerated spouse, son, daughter, mother, or father. But the princely sum prison telecommunications carriers charge to relay that voice to families, and the frustrating collect calling process and bill payment procedure, combine to make the simple act of picking up a phone receiver a source of great stress for families with members incarcerated in private and public prison facilities. Low-income families are hardest hit. For them, these choices can be quite stark and difficult – does one pay basic monthly expenses for essentials like food and shelter, or does one instead talk to an incarcerated relative?

A. Families Face Great Difficulty in Maintaining Contact With Incarcerated Loved Ones

Kathy's story is instructive.³⁷ Her only child was 17 years old when he pled guilty to a non-violent offense, received a 5-year sentence, and entered the federal prison system. At the time "he had never been away from home, never worked, and never driven a car," she recalls. Like many parents whose children are incarcerated, she worried about him: "I am in fear for his life every single day." Kathy's son ended up in a private facility run by the Corrections

³⁷ "Kathy" is a pseudonym. The woman who related this story to the Brennan Center requested anonymity. Kathy's Statement of Interest is contained in Appendix A; additional information about her situation is contained in e-mails on file with the Brennan Center.

Corporation of America and telephone calls became her primary way of staying in regular contact with her son. Coalition members John and Linda Wojas know this fear. During their daughter's incarceration, she was physically assaulted so severely that she had to be hospitalized and needed plastic surgery. On another occasion, she was sexually assaulted. "The telephone is the only means of providing immediate support and encouragement during these horrific times," they say.³⁸ Coalition member Janie Canino likewise says she accepts her incarcerated son's long distance collect calls because it gives her "peace to know he is okay."³⁹ The problem works the other way, too: children have a hard time maintaining relationships with their parents in prison. In fact, a Department of Justice report on incarcerated parents found the majority of fathers and mothers in state prison had *never* had a personal visit with their minor children.⁴⁰ One reason is distance – "prisoners are housed in facilities that are an average distance of more than 100 miles from their families."⁴¹

Another reason is the visitation process itself. As Dr. Creasie Finney Hairston, Dean of Social Work at Jane Addams College at the University of Illinois in Chicago, explains:

³⁸ See Wojas Statement of Interest.

³⁹ See Canino Statement of Interest.

⁴⁰ Christopher J. Mumola, *Incarcerated Parents and Their Children*, U.S. Department of Justice, Bureau of Justice Statistics (Aug. 2000).

⁴¹ Jim McKinnon, *Helping Family Ties Penetrate Prisons – Agencies Keep Kids in Touch With Kin*, Pittsburgh Post-Gazette (Nov. 5, 2003) at B1; See also Hairston Declaration at ¶ 22, attached as Appendix B; Jeremy Travis et al., *Families Left Behind: The Hidden Costs of Incarceration and Reentry*, Urban Institute Justice Policy Center (Oct. 29, 2003), available at http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf (citing John Hagan and Juleigh Petty, *Returning Captives of the American War on Drugs: Issues of Community and Family Reentry*, paper prepared for the Reentry Roundtable, Washington, D.C., Oct. 12-13, 2000 (2002)). See also discussion section II, *supra*.

In many facilities, visiting is difficult (and prohibited for some family members) because of policies requiring children's custodial parents to escort them on visits, or limiting children visitors to those for whom birth certificates list the prisoner as the biological parent. Prison officials may deny visitors entry to the facility for other reasons, including constantly changing dress codes, no identification for children, and ion drug scanners that inaccurately signal that a visitor is carrying drugs.

Many family members are discouraged from visiting by the many indignities the visitation process entails. The visit is often a lesson in humility, intimidation and frustration; and a highly charged and anxiety producing event. Among the problems noted in one state report of prison visiting were long waits, sometimes in facilities without seating, toilets and water; the lack of nutritious food in visiting room vending machines; and the absence of activities for children. Body frisks and intrusive searches, rude treatment by staff, and hot, dirty and crowded visiting rooms are the norm in many prisons. These conditions are particularly difficult for children to endure.⁴²

Writing letters is another communication tool. However it, too, presents difficulties, particularly for the many functionally illiterate people in prison. Letter writers must also contend with the vagaries of prison mail delivery. It is not uncommon for a letter sent to someone in prison to arrive months after it was sent, if it arrives at all.⁴³ Coalition member Joan Roberts says her incarcerated son has gone four months without receiving any of the letters she sends him.⁴⁴ For these reasons, for many families, telephone contact is the most realistic and convenient way to stay in touch with incarcerated relatives and friends.

For Kathy, speaking with her son by phone meant dealing with Evercom. The company, which she had never heard of and which she had no choice in selecting, was the sole provider of

⁴² Hairston Declaration at ¶¶ 22-23.

⁴³ See Hairston Declaration at ¶ 24.

⁴⁴ See Joan Roberts Statement of Interest.

long distance collect calling phone service from her son's prison. The experience of dealing with the monopolistic provider changed her life.

"Every minute you're talking you're thinking about how much it is costing," she recalls. Her phone bills for prison calls were high – on average \$200 - \$300 per month, and some months even higher. One particularly steep month her bill was close to \$1,000 – about \$50 of which represented her local service and her non-prison long distance charges. "One of the most frustrating things about it," Kathy reports, was that the phone company would often "drop," or disconnect, her calls with her son in the middle of a conversation. Hanging over every conversation was a cloud of fear that her chat with him would suddenly end. The only sure thing was that each time her son called, even if he was reconnecting after a dropped call, Evercom would charge Kathy a \$2.85 connection fee.

Organizations that support families with incarcerated members pay special attention to the issue of long-distance phone calls, both their cost and importance, warning families like Kathy's to prepare themselves for the financial and emotional strain maintaining phone contact presents. For example, Centerforce, a California-based organization that works to "strengthen individuals and families affected by incarceration through a comprehensive system of education and support,"⁴⁵ addresses the issue this way in its "10 steps to success while your family member is inside":

Budget Your Money

- If you are accepting collect calls from your family member who is incarcerated, expect higher phone bills and budget accordingly; and

⁴⁵ Centerforce, *Our Mission*, available at <http://www.centerforce.org/aboutUs> (last accessed March 8, 2004).

- Know your limits and don't overstep them. Negotiate with your family member inside, and come up with a plan to stay connected without putting you in debt (from number of visits, number of phone calls you can accept, to sending him/her money).

Stay Connected

- Remember that visiting is just one way to stay connected; phone calls can be just as beneficial.

Assisting Families of Inmates, Inc., in Richmond, Virginia, another family support group, suggests this coping strategy to families: "Set financial and emotional limits with your loved one and set them early. Phone calls, visits and financial support for your loved one can easily get out of hand. Decide what you have time and the finances to do and stick to those limits."⁴⁶

"This phone issue is a huge problem for the families. Everyone I know is in the same situation," says Kathy. "I consider myself lucky because I am able to pay the monthly phone bills. If I was in the situation most people are in, I could not talk to my son. I don't know how other families do it."⁴⁷

Others certainly are not as "lucky" as Kathy. Many have lost their primary breadwinner to incarceration, leaving them destitute. Many forego paying for other essentials in order to maintain phone contact. Coalition member Lloyd Snook has a client on death row in Virginia whose mother is AIDS-infected and disabled. Allowed one visit with her son per month, the woman had to choose between speaking with her son by phone – which cost \$100 per month –

⁴⁶ Assisting Families of Inmates, *Coping Strategies*, available at <http://www.foi.org/Coping.htm> (last accessed February 3, 2004).

⁴⁷ Her son's incarceration affects Kathy's entire family. Her father has started making her mortgage payments, an additional financial burden that stretches his resources, in order to free up funds for her to cover large phone bills.

paying her rent, and purchasing her medication. She chose contact over rent, and now lives in homeless shelters.⁴⁸

For some families, the phone service structure and exorbitant fees make phone contact, the only possible form of contact, simply impossible. For example, more than 800 Alaskans, many of whom are residents of remote rural villages engaged in subsistence living with virtually no cash economy, are housed in Corrections Corporation of America facilities in Florence, Arizona – more than 2,000 miles from their homes. The only possible way for these individuals to maintain family contact is by telephone. However, up-front cash demands, accompanied by exorbitant per minute rates, make it impossible for them to access phone service.⁴⁹

In addition to cost, prisons' collect call-only policies, poor service and lack of service choice also take their toll on families. Kathy's son could only call her collect, which meant he could not leave messages on her answering machine. If she were not home, she could not hear from him. Consequently, Kathy did not want to leave the house for fear she would miss his calls. Bill payment, a relatively simple task, required Kathy to adopt a rather complex routine. First, she would send her payment to her phone company – which billed her for both regular phone service and the prison phone service. Her phone company, in turn, forwarded Evercom's share to Evercom. Even after paying her bill, Kathy feared Evercom might place a block on her phone that would prevent her from receiving phone calls from her son's prison. So, after sending payment to her phone company, she would call Evercom to notify them her bill was paid.⁵⁰ On

⁴⁸ See Snook Statement of Interest.

⁴⁹ See Lerman Statement of Interest.

⁵⁰ The prison phone company placed a block on Kathy's phone if they did not receive payment for a bill or if the phone charges reached \$300 at any point during the month. If the calls reached that amount part-way through the month, even before the bill was due, the company would,

occasion when she did not notify Evercom of a payment, the company blocked her phone even though she had paid her bill. Indeed, Evercom even blocked her phone after receiving notice of her payment. Once the block was in place the burden was on Kathy, first, to discover it (since the company did not provide advance notice that it was blocking the line) and, second, to demand its removal.

For families, monopolistic provider arrangements and collect call policies produce high prices, poor service, and no choice in service provider. When people in prison cannot maintain phone contact with their family members there are other costs as well – to penal institutions, potential parolees, their families and public safety.

B. Family Contact Furthers Penological Interests

People in prison who maintain contact with their families are more likely to have positive interactions with others while incarcerated. The Federal Bureau of Prisons (“BOP”) recognizes this in the preamble to its regulations. “The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development.”⁵¹ Studies show that “telephone usage and other contacts with family contribute to

without providing notice, block Kathy’s line so her son’s calls could not get through to her. To avoid this Kathy sometimes would call Evercom part way through the month to determine how close she was to the \$300 limit. If necessary, she would pay Evercom part way through the month before her bill was due in order to protect against the interim block. See discussion of similarly burdensome blocking techniques employed by MCI, *supra* n.30.

⁵¹ 28 C.F.R. § 540.100. The 17 cents per minute cost for calls from federal Bureau of Prison facilities reflects this desire to facilitate telephone contact between people and prison and their families, as does the fact that the Bureau of Prisons permits the people it incarcerates to use debit cards to place direct calls. See discussion *supra* section II.D.1; Report of the Virginia State Corporation Commission’s Division of Communications on Rates Charged to Recipients of Inmate Long Distance Calls, Attachment 1 (2000), available at <http://www.state.va.us/scc/caseinfo/reports/inmateldrept.pdf>.

inmate morale, better staff-inmate interactions, and more connection to the community, which in turn has made them less likely to return to prison,”⁵² and that quality family visitation improves the mental health of people in prison, as well as their ability to participate successfully in prison programs and avoid disciplinary problems while incarcerated.⁵³

Louisiana’s Department of Public Safety and Corrections, in a publication called “Time in Prison: The Adult Institutions,” writes that “maintaining family contacts is important to an inmate’s ability to adjust in prison and to his/her future potential to return successfully to a community. Access to telephones and visiting support this need.”⁵⁴

C. Family Contact Aids Efforts to Secure and Successfully Complete Parole

Parole review boards consider the strength of ties between people in prison and their families in determining whether to release someone on parole. Research – in Illinois and California, and at the federal level – supports review board perceptions that family matters for parole success. An Illinois study of people released from prisons between 1925 and 1935 showed that 75% of those who had maintained active family interest (*i.e.*, maintained continuing visitation with family members) during their term of incarceration were successful on parole

⁵² U.S. Department of Justice, Office of the Inspector General, *Criminal Calls: A Review of the Bureau of Prisons’ Management of Inmate Telephone Privileges*, Ch. II, n.6 (Aug. 1999), available at <http://www.usdoj.gov/oig/special/99-08/callsp2.htm#background> (last accessed March 9, 2004).

⁵³ Terry A. Kupers, M.D., *Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It* (1999).

⁵⁴ State of Louisiana Department of Public Safety and Corrections, *Time in Prison: The Adult Institutions*, p. 5 (2004), available at <http://www.corrections.state.la.us/Whats%20NEw/PDFs/TimeInPrison.pdf> (last accessed March 9, 2004). Louisiana has contracted for the Corrections Corporation of America to operate the Winn Correctional Center in Winnfield, Louisiana.

while only 34% of those considered loners experienced parole success.⁵⁵ The California Board of Prison Terms evaluates “family support” when deciding whether a person is suitable for parole.⁵⁶ A study of people in California prisons and their families, “Explorations in Inmate-Family Relationships” (1972), found that “in every comparison category, including [people] with three or more prior commitments [to prison], men with more family-social ties [had] the fewest parole failures.”⁵⁷ An assessment of people incarcerated in federal prisons found that 71% of those involved in active family interest groups were successful on parole compared with 50% of those in the no contact with relatives group.⁵⁸ Finally, a recent survey of visitors to two men's prisons found that successful completion of parole is significantly related to the maintenance of family ties during incarceration.⁵⁹

Summarizing the extant research literature, Eva Lee Homer noted that “the convergence of these studies, the consensus of findings, should be emphasized. The strong positive relationship between strength of family-social bonds and parole success has held up for more than 50 years, across very diverse offender populations and in different locales. *It is doubtful if*

⁵⁵ Lloyd Ohlin, *The Stability and Validity of Parole Experience Tables* (1954) (Ph.D. dissertation for University of Chicago), *cited in* Daniel Glaser, *The Effectiveness of a Prison and Parole System* 366 (1964).

⁵⁶ “Studies on recidivism have shown that prisoners who remain in close contact with their families are less likely to commit new offenses after being freed ... The [California] Board of Prison Terms says family support is one of its criteria for deciding whether an inmate is suitable for parole.” Jennifer Warren, *The State Inmates' Families Pay Heavy Price for Staying in Touch Phones*, Los Angeles Times (Feb. 16, 2002) at B10.

⁵⁷ Norman Holt & Donald Miller, *Explorations in Inmate-Family Relationships* (1972).

⁵⁸ Glaser, *supra* n.55.

⁵⁹ N.E. Schafer, *Exploring The Link Between Visits And Parole Success: A Survey Of Prison Visitors*, 38 International J. of Offender Therapy & Comparative Criminology pp. 17-32 (1994).

*there is any other research finding in the field of corrections which can come close to this record.”*⁶⁰

Communication between people in prison and their family members is a primary indicator of family ties, a tangible factor parole boards look to in order to assess parole requests and make parole decisions. To the extent that monopolistic practices, collect call-only policies, and poor service prevent inmates from making contacts that demonstrate or facilitate ongoing relationship with their families, they could be preventing deserving individuals from securing parole. Not only is this result unfair to those individuals and their families, but it is also costly to taxpayers whose dollars are used to incarcerate people who should be home. “According to June 2001 figures from the California Department of Corrections, it currently costs \$25,607 per year to incarcerate a prisoner. If increased family contact by phone was able to keep just 0.7 percent of the current prison population from re-entering (that's about 1,200 people), the state would save \$30,728,400 in prisoner housing costs”⁶¹

D. Family Contact Reduces Recidivism

Related to parole success, social scientists also conclude that people in prison who maintain family contact while incarcerated are more successful at staying out of the criminal justice system once they return home. As reported in the Annual Review of Sociology, “[p]risoners who experienced more family contact -- whether through visits or mail, or via participation in programs intended to facilitate family contact --experienced lower recidivism

⁶⁰ Eva Lee Homer, *Inmate-Family Ties: Desirable But Difficult*, 47-52 Federal Probation p. 49 (1979) (emphasis added).

⁶¹ Celeste Fremon, *Crime Pays – the Phone Company and the State*, Los Angeles Weekly (June 22, 2001).

rates and greater post release success.”⁶² The studies mentioned above, issued by the Florida House of Representatives Justice Council Committee on Corrections (1994) and the California Department of Corrections Research Division (1972), concluded that encouraging families to remain intact helps lower recidivism.⁶³ District of Columbia Mayor Anthony Williams recently endorsed these findings, stating “when prisoners have contact with their families, and that is coupled with good rehabilitative programs . . . then it pays dividends down the road because you have less recidivism.”⁶⁴ In addition, Dr. Hairston’s review of research on prisoners’ family relationships yielded two consistent findings. “First, male prisoners who maintain strong family ties during imprisonment have higher rates of post release success than those who do not. Second, men who assume responsible husband and parenting roles upon release have higher rates of success than those who do not. There is similar evidence regarding the beneficial value of family ties for females in prisons. Family relationships have a significant influence on relapse prevention among parolees.”⁶⁵ This research accords with the experience of many Coalition members, such as the Women’s Prison Association, which provides social services to 2,000 women annually who are involved in the criminal justice system, and the Center for Community Alternatives, which provides sentencing and parole advocacy and HIV-related services to

⁶² Christy A. Visser & Jeremy Travis, *Transitions From Prison to Community: Understanding Individual Pathways*, Annual Review of Sociology (2003).

⁶³ See also *Families Left Behind*, supra n.41 (citing C.F. Hairston, *Family Times During Imprisonment: Do they Influence Future Criminal Activity?* Federal Probation pp. 48-52 (1998)).

⁶⁴ Arthur Santana, *Locked Down and Far From Home; One-Third of D.C. Prisoners Incarcerated More Than 500 Miles Away*, Washington Post (April 24, 2003) at B1.

⁶⁵ Hairston Declaration at ¶¶ 11-12. See also E. Slaght, *Family and Offender Treatment: Focusing on the Family in the Treatment of Substance Abusing Criminal Offenders*, 19 J. of Drug Education 53-62 (1999).

incarcerated people. Both of these organizations have signed these Comments because communication with family members is essential to the ability of the people with whom they work to re-enter society successfully.⁶⁶

Recognizing that telephone contact is critical to parole success and reducing recidivism several corrections officials and agencies have adopted policies explicitly recognizing the importance of extending inmate telephone privileges, including the American Correctional Association,⁶⁷ Federal Bureau of Prisons and National Sheriffs' Association,⁶⁸ among others. For example, the Federal Bureau of Prisons indicates in its program statement on telephone regulations for incarcerated people that:

The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development...Contact with the public is a valuable tool in the overall correctional process. Towards this objective, the Bureau provides inmates with several means of achieving such communication. Primary among these is written correspondence, with telephone and visiting privileges serving as two supplemental methods.⁶⁹

Through its policy statement, the American Correctional Association acknowledges the importance of telephone contact for correctional management purposes:

⁶⁶ See Women's Prison Association and Center for Community Alternatives Statements of Interest.

⁶⁷ The American Correctional Association is the national organization that accredits prisons.

⁶⁸ Resolution of 14 June 1995.

⁶⁹ Bureau of Prisons, Program Statement No. 5264.07, Telephone Regulations for Inmates (Jan. 31, 2002), available at http://www.bop.gov/progstat/5264_007.pdf (last accessed March 9, 2004).

[C]onsistent with the requirements of sound correctional management, inmates/juvenile offenders should have access to a range of reasonably priced telecommunications services. Correctional agencies should ensure that:

- A. Contracts involving telecommunications services for inmates/juvenile offenders comply with all applicable state and federal regulations;
- B. Contracts are based on rates and surcharges that are commensurate with those charged to the general public for like services. Any deviation from ordinary consumer rates should reflect actual costs associated with the provision of services in a correctional setting; and
- C. Contracts for inmate/juvenile offender telecommunications services provide the broadest range of calling options determined to be consistent with the requirements of sound correctional management.⁷⁰

Furthermore, the American Correctional Association, which according to Corrections Corporation of America has accredited 75% of its facilities,⁷¹ expressly adopted in 2002 a policy against excessive phone rates:

Written policy, procedure and practice [must] ensure that offenders have access to reasonably priced telephone services. Correctional agencies [must] ensure that:

- a. Contracts involving telephone services for offenders comply with all applicable state and federal regulations;
- b. Contracts are based on rates and surcharges that are commensurate with those charged to the general public for like services. Any deviation from ordinary consumer rates reflects actual costs associated with the provision of services in a correctional setting; and

⁷⁰ Public Correctional Policy unanimously ratified by ACA Delegate Assembly on Jan. 24, 2001.

⁷¹ Corrections Corporation of America, *Why Do Business With CCA*, available at <http://www.correctionscorp.com/4main.html#performance> (last accessed March 9, 2004).

- c. Contracts for offender telephone services provide the broadest range of calling options determined by the agency administrator to be consistent with the requirements of sound correctional management.⁷²

E. Family Contact Promotes Reunification

Based on her extensive research, Dr. Hairston concludes that, “communication between prisoners and their families provides the most concrete and visible strategy that families and prisoners use to manage separation and maintain connections. Families visit their imprisoned relatives at the institutions where they are held, talk with them by phone, and exchange cards and letters as a means of staying connected.”⁷³ Contact between people in prison and their families is particularly important for children with incarcerated parents. Most state (55%) and federal (63%) inmates – some 721,500 people – are parents of children under 18.⁷⁴ In 1999, 1.5 million children under 18 had a parent in state or federal prison.⁷⁵ Nationwide 2.1% of minor children had a parent in state or federal prison.⁷⁶ The Department of Health and Human Services

⁷² This standard is contained in the following American Correctional Association manuals: *Standards for Adult Correctional Institutions*, third edition; *Standards for Adult Local Detention Facilities*, third edition; *Standards for Adult Community Residential Facilities*, fourth edition; *Standards for Adult Correctional Boot Camp Programs*, first edition; *Standards for Juvenile Community Residential Facilities*, third edition; *Standards for Juvenile Detention Facilities*, third edition; *Standards for Juvenile Correctional Boot Camp Programs*, first edition; *Standards for Juvenile Training Schools*, third edition; *Standards for Small Juvenile Detention Facilities*, first edition; and *Small Jail Facilities*, first edition.

⁷³ Hairston Declaration at ¶ 17.

⁷⁴ *Incarcerated Parents and Their Children*, *supra* n.40, at 2.

⁷⁵ *Id.*

⁷⁶ *Id.* For African-American and Hispanic children those numbers are even higher – the percentage of black children in the U.S. resident population with an incarcerated parent (7.0 percent) was nearly nine times higher than that of white children (0.8). Hispanic children were three times as likely as white children to have a parent in prison (2.6).

Administration for Children and Families, in a recently issued request for proposals, stresses the importance of communication between incarcerated parents and their children: "In situations where incarcerated parents were actively engaged in the mentoring process, through visits, phone conversations or letters, reunification is a natural process."⁷⁷

On average, parents in state prison are expected to serve 80 months (almost 7 years), while those in federal prison are expected to serve 103 months (almost 9 years).⁷⁸ In most cases, enabling families to "maintain contact during incarceration reassures children of their parents' love, motivates parents in their recovery and rehabilitation efforts, and increases the likelihood that families can be successfully reunited when prisoners return home," according to Shay Bilchik, Executive Director of the Child Welfare League of America.⁷⁹ Dr. Hairston explains:

These contacts allow family members to share family experiences, participate in family rituals, and remain emotionally attached. They help assure incarcerated parents that their children have not forgotten them and help assure children that their parents love and care about them. They allow people in prison to see themselves, and to function, in socially acceptable roles rather than as prison numbers and institutionalized dependents.⁸⁰

⁷⁷ U.S. Department of Health & Human Services, Administration for Children & Families, Family & Youth Services Bureau, *RFP: Mentoring Children of Prisoners*, 69 Fed. Reg. 8201, 8201-8209 (Feb. 23, 2004).

⁷⁸ *Incarcerated Parents and Their Children*, *supra* n.40, at 6.

⁷⁹ Shay Bilchik, *Children of Convicts Struggle with a Prison of Their Own*, Seattle Post-Intelligencer (May 12, 2002), at F9.

⁸⁰ Hairston Declaration at ¶¶ 17-20. Thousands of children across the country are themselves incarcerated in prisons operated by Corrections Corporation of America and other private prison administrators. See <http://www.correctionscorp.com/tourjuvenile.html> for a description of Corrections Corporation of America's work with juveniles. According to this page, Corrections Corporation of America operates the following juvenile facilities:

Corrections Corporation of America Juvenile Facilities: -
-- Shelby Training Center - Memphis, Tennessee. A 200-bed, secure juvenile center
-- Tall Trees - Memphis, Tennessee. A 63-bed, non-secure juvenile residential facility
Corrections Corporation of America Jails housing Juvenile Offenders:

Finally, it is worth noting that last year, Corrections Corporation of America, which recently “forged a partnership” with Good News Jail and Prisoner Ministry, acknowledges that “[r]elationships [between people in prison and chaplains] are intended to provide a way for [people in prison] to establish connections with the community that will benefit them upon release.”⁸¹ Appreciating both the importance of family-inmate contact, and its high cost, last December, the private prison corporation’s partner made a public appeal for phone cards which Good News Jail and Prisoner Ministry then distributed to inmates in the Guilford Correctional Center in North Carolina.⁸² Unfortunately, Corrections Corporation of America’s policies with respect to telephone services does not reflect a similar understanding of the importance of communications between incarcerated people and their families. Indeed, the high rates charged to people incarcerated at its facilities result in part from the commissions imposed by CCA on inmate telephone service providers.

This is a similar appeal to the Commission to modify existing policies that obstruct contact between people in prison and their families, which in turn harm penological interests, family interests, and public safety. We urge this Commission to eliminate the anticompetitive

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- Bay County Jail and Annex - Panama City, Florida
 - Hernando County Jail - Brooksville, Florida
 - David L. Moss Criminal Justice Center - Tulsa, Oklahoma
 - Houston Processing Center - Houston, Texas

Thus, reasonably priced, quality phone service is key to ensuring contact between free parents and their incarcerated children as well.

⁸¹ See Corrections Corporation of America, *Press Release June 5, 2003*, available at <http://www.correctionscorp.com/index.aspx>.

⁸² See *Non-Profit Wish Lists: Give Them a Hand*, North Carolina News & Record (Dec. 7, 2003) at D1 (saying that the organization needs “[t]elephone cards with up to 500 minutes to allow inmates to call family member in United States for holidays”).

practices and collect call-only policies that enable high costs and poor service to flourish, and that devastate families.

IV. Allowing Exclusive Dealing Arrangements and Collect Call-Only Policies Severely Limits the Ability of Incarcerated People to Communicate With Their Lawyers

Exorbitant long distance collect call telephone rates, collect call-only policies, and the exclusivity of prison telephone contracts, which allow companies to provide substandard service, all severely restrict the ability of people in prison to communicate with their attorneys. This burden on communication interferes with the ability of criminal defendants to exercise their constitutional right to legal representation, of immigration detainees and incarcerated people with civil cases to exercise their right of access to the courts, and of incarcerated people to prepare for a successful re-entry into society.

The ability of incarcerated litigants to communicate with their attorneys is of paramount importance. The Sixth Amendment to the U.S. Constitution guarantees criminal defendants the effective assistance of counsel. The United States Supreme Court has held that this provision requires the government to provide counsel to those who cannot afford to hire an attorney.⁸³

All other litigants have a constitutional right of access to the courts under the Fourteenth Amendment to the U.S. Constitution. For many of these litigants, the assistance of an attorney is essential for them to be able to gain access to the courts. In immigration proceedings, for example, an immigrant represented by an attorney is approximately four times more likely to persuade an immigration judge to grant an asylum application than is someone who has no attorney.⁸⁴ If a litigant has limited English skills – as many detained immigrants do – or if a litigant is illiterate – as many prisoners are – the need for an attorney is all the greater.

⁸³ *Alabama v. Shelton*, 535 U.S. 654 (2002); *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁸⁴ Christopher Nugent, *The INS Detention Standards and You: Facilitating Legal Representation and Humane Conditions of Confinement for Immigration Detainees*, available at www.abanet.org/immigration/probono/home.html.

For people in prison with pending criminal charges or appeals, or with immigration or civil cases, many of whom are incarcerated in privately administered prisons, it is vitally important to be able to speak with and assist the lawyer handling their cases. A person may need to contact his or her lawyer to share information about the case, to learn crucial information about the status of the case, or to make critical strategy decisions.⁸⁵ Often, the telephone is the only or most efficient means to communicate with lawyers because prisons and jails are located far from lawyers' offices, or because resource constraints, busy caseloads, or inconvenient visiting schedules force lawyers to visit only infrequently.

Courts have long recognized that the ability to communicate privately with an attorney by telephone is essential to the exercise of the constitutional rights to counsel and to access to the courts.⁸⁶ They have accordingly held that, when prisons' collect call-only policies interfere with the ability of incarcerated people to communicate with their lawyers, they may violate these

⁸⁵ *Johnson v. Galli*, 596 F. Supp. 135, 138 (D. Nev. 1984) (use of a telephone is essential to contact a lawyer, bail bondsman or other person in order to prepare a case).

⁸⁶ *Murphy v. Waller*, 51 F.3d 714, 718 & n.7 (7th Cir. 1995) ("Restrictions on a detainee's telephone privileges that prevented him from contacting his attorney violate the Sixth Amendment right to counsel. . . . In certain limited circumstances, unreasonable restrictions on a detainee's access to a telephone may also violate the Fourteenth Amendment."); *Tucker v. Randall*, 948 F.2d 388, 390-91 (7th Cir. 1991) (denying a pre-trial detainee telephone access to his lawyer for four days would implicate the Sixth Amendment); *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1051 (8th Cir.1989) (holding that inmates' challenge to restrictions on the number and time of telephone calls stated a claim for violation of their rights to counsel); *Miller v. Carlson*, 401 F. Supp. 835 (M.D. Fla. 1975), *aff'd & modified on other grounds*, 563 F.2d 741 (5th Cir. 1977) (granting a permanent injunction precluding the monitoring and denial of inmates' telephone calls to their attorneys). See also Dana Beyerle, *Making Telephone Calls From Jail Can Be Costly*, Times Montgomery Bureau (Sept. 22, 2002) (Etowah, Alabama county jail under court order to provide phones to people incarcerated in the jail based in part on complaints they could not talk to lawyers).

rights.⁸⁷ The prison telephone arrangements challenged in the *Wright Petition* pose precisely the types of impediments that the courts have found to be unconstitutional. They interfere with the ability of people in prison to communicate with their lawyers, in violation of the Sixth Amendment, in several ways: by keeping the cost of the calls high, by restricting people in prison to making collect calls, and by allowing exclusive telecommunications service providers to provide substandard service.

In section I.D.1, these Comments listed some of the extremely high costs that Coalition members have had to pay in order to accept collect calls from their clients in prison – adding several hundred dollars, and sometimes over a thousand dollars to their monthly phone bills. Publicly funded lawyers, who represent the vast majority of criminal defendants incarcerated in jails and prisons, often cannot afford to accept high-priced collect calls from their clients. State and county governments bear the cost of providing legal representation to the poor in criminal cases, typically by creating public defender programs, or by using private attorneys who are appointed on a case-by-case basis or who contract to accept a county's full or partial caseload in return for a lump sum.⁸⁸ Indigent defense systems across the country suffer from severe under-

⁸⁷ See, e.g., *Lynch v. Leis*, Docket No. C-1-00-274 (S.D. Ohio Feb. 19, 2002) (holding that where public defender's office and many private attorneys refused most collect calls, a prison's collect call-only policy was unconstitutional) (unpublished decision on file with the Brennan Center); *In re Ron Grimes*, 208 Cal. App. 3d 1175, 1178 (1989) (holding that switch by Humboldt County (California) Jail from coin operated to collect-only calls violated the constitutional rights of people incarcerated there because the public defender's office, other county departments, and some private attorneys did not accept collect calls).

⁸⁸ The Spangenberg Group, *State and County Expenditures for Indigent Defense Services in Fiscal Year 2002* (American Bar Assoc. 2003) (describing each state's indigent system and expenditures).

funding, which commentators credit with causing a “crisis” in indigent defense.⁸⁹ For example, in Texas – where there are 16 private Corrections Corporation of America facilities (including several county jails and state prisons), and many other privately run jails and prisons – a report on indigent defense practices concluded that none of the counties studied “provide[s] sufficient funds to assure quality representation to all indigent defendants.”⁹⁰ The compensation rates for court-appointed lawyers are so low that often they are not paid for work performed outside of court, such as visiting clients in jail.⁹¹

Faced with these resource constraints, many attorneys representing indigent criminal defendants – including signatories such as Lesli Myers, who represents people incarcerated in a Corrections Corporation of America facility in Broken Arrow, Oklahoma – simply are unable to afford collect calls from their clients, or are forced to severely limit the number of such calls they

⁸⁹ Richard Klein and Robert Spangenberg, *The Indigent Defense Crisis* (The American Bar Assoc., Section of Criminal Justice, Ad Hoc Committee on Indigent Defense Crisis 1993); NAACP Legal Defense and Educational Fund, *Assembly Line Justice: Mississippi's Indigent Defense Crisis* 6 (2003) (“Lawyers for the poor lack funds to conduct the most basic investigation, to conduct legal research, or to hire experts”); Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Indigent Defense in Pennsylvania* 184 (May 2002) (concluding that indigent defense receives inadequate resources to provide adequate representation); Bill Rankin, *Indigent Defense Rates F*, *The Atlanta J. Constitution* (Dec. 12, 2002) (describing shortcomings and underfunding in Georgia’s indigent defense system, which handles 80% of the state’s criminal cases); Texas Appleseed Fair Defense Project, *The Fair Defense Report: Findings and Recommendations on Indigent Defense Practices in Texas* 10-12 (Dec. 2000) (describing lack of resources in Texas’ indigent defense system); Douglas W. Vick, *Poorhouse Justice: Underfunded Indigent Defense Services and Arbitrary Death Sentences*, 43 *Buff. L. Rev.* 329 (1995) (discussing the problem of underfunding in indigent defense systems); The Spangenberg Group, *A Comprehensive Review of Indigent Defense in Virginia* 82 (American Bar Assoc. Standing Committee on Legal Aid and Indigent Defendants Jan. 2004).

⁹⁰ Texas Appleseed Fair Defense Project, *The Fair Defense Report: Findings and Recommendations on Indigent Defense Practices in Texas* 12 (Dec. 2000).

⁹¹ *Id.*

accept.⁹² For example, four district public defenders in Tennessee – a state in which the Corrections Corporation of America houses almost a quarter of the prison population – do not accept collect calls from prison.⁹³ Likewise, in Hamilton County, Ohio – a state in which approximately 1,800 people are housed in private prisons – the public defender’s office and many private attorneys refuse most collect calls from jails and prisons.⁹⁴ Many other lawyers severely limit the number of collect calls they accept from people in prison. Coalition member North Carolina Prisoner Legal Services Inc., which represents people in prison in both civil litigation and criminal appeals, does not accept collect calls from people in prison except in emergency situations or cases where it represents the client in litigation, when court filing deadlines require it.⁹⁵ Coalition member the Committee for Public Counsel Services, which provides public defender services for the Commonwealth of Massachusetts, accepts collect calls only at certain times of day, and only if the caller’s particular attorney is in the office and

⁹² Myers Statement of Interest. *See also The Issue: Phone Fees, Overcrowding Merit Discussion. Our View: These Two Issues Won’t Go Away When New Jail Opens for Business*, Evansville (Ind.) Courier & Press (Dec. 23, 2003) (Vanderburgh County, Illinois public defender does not accept collect calls from people in jail); *U.S. ex rel. Green v. Washington*, 917 F. Supp. 1238, 1244 (N.D. Ill. 1996) (finding that as a result of 1993 budget cuts the Illinois Office of State Appellate Defender for the First District had to “reduce its budget for travel to prisons and to limit the office’s ability to accept collect phone calls from clients”); *Greer v. St. Tammany Parish Jail*, 693 F. Supp. 502 (E.D. La. 1988) (inmate stated he was only allowed to make collect calls, and the St. Tammany Parish public defender’s office did not accept collect calls); *Malady v. Baker*, 650 F. Supp. 901, 903 (E.D. Mo. 1987) (public defenders in Missouri decide whether to accept inmate collect calls based on “urgency of communications, possibility of correspondence and budgetary concerns”). *See also* cases discussed in note 87, *supra*.

⁹³ E-mail from Andy Hardin, Executive Director of the Tennessee District Public Defenders Conference, Feb. 26, 2004, on file with the Brennan Center; Getahn Ward, *Private Prison Operator Ready to Grow Anew*, *The Tennessean* (Oct. 6, 2003).

⁹⁴ *See Lynch v. Leis*, *supra* n.87; Ohio Department of Rehabilitation and Correction, *The Institutions*, available at <http://www.drc.state.oh.us/web/prisprog.htm>.

⁹⁵ *See* North Carolina Prisoner Legal Services, Inc. Statement of Interest.

available to take the call.⁹⁶ The Prisoner's Rights Information System of Maryland, a private legal services group under contract with Maryland to provide legal services to people in prison, has a similar policy and will accept phone calls from actual clients only.

In addition to interfering with attorney-client communication, the high cost of long distance collect calls from prison reduces the total assets available to finance criminal defense and other types of legal representation for people in prison. Some publicly funded criminal defense lawyers, such as signatories Kern County, California public defender Mark A. Arnold; the Metropolitan Public Defender's Office in Davidson County, Tennessee; and the New York-based Office of the Appellate Defender and Center for Appellate Litigation, are not reimbursed for the collect calls they accept and must absorb the costs of collect calls from their clients.⁹⁷ Many immigration attorneys and legal services lawyers, which receive their limited funding from government sources, foundations, and individual donations, do the same. Other publicly funded criminal defense lawyers, such as signatory Clay Hernandez, P.C., which represents people in

⁹⁶ See Committee for Public Counsel Services Statement of Interest.

⁹⁷ See Arnold Statement of Interest; Metropolitan Public Defender's Office Statement of Interest; Office of the Appellate Defender Statement of Interest; Center for Appellate Litigation Statement of Interest.

Even when lawyers are reimbursed for some collect calls, there are often stringent limits on the number of collect calls from prison for which they will be reimbursed. These limits are presumably a result of the high cost of the calls. For example, lawyers who are appointed to represent indigent criminal defendants in federal criminal cases before the U.S. Court of Appeals for the Sixth Circuit are instructed:

Long distance telephone calls may be reimbursed where it is determined that the calls were reasonable and necessary for proper handling of the case, except that the cost of telephone calls to the client will be reimbursed only where they have been authorized by the court in advance. In any event, funds are not available to cover either counsel's time or expenses for more than three telephone conferences with the client.

United States Court of Appeals For The Sixth Circuit Criminal Justice Act (CJA) Form 20 Submission Instructions, Section C.5 (Revised and Updated: 7/11/2002).

private and public prisons in Arizona, pass the costs of their clients' collect calls on to the governmental entity funding them.⁹⁸ Either way, the net result is that a portion of the scarce public dollars allocated for the defense of indigents in criminal cases and for the representation of low-income people in other types of cases are diverted to private prison administrators and the telephone companies that have exclusive inmate service contracts at those facilities, instead of being spent on investigators, training for attorneys and investigators, law books, and other items essential to providing the legal representation that is so sorely needed, and that is often constitutionally required.

Even if the cost of collect calls from prison were lower, collect call-only policies would still hamper the ability of incarcerated people to communicate with their lawyers. Many criminal defense lawyers – including several of the attorneys participating in the Coalition signing these Comments – use automated telephone systems in order to avoid the expense of employing a receptionist.⁹⁹ These telephone systems generally cannot accept collect calls, with the result that even if the lawyers could afford to accept the calls, they would not be able to do so. A similar problem arises for attorneys who use answering machines or voice mail, because when their incarcerated clients are limited to calling collect, the clients cannot leave messages.¹⁰⁰

Moreover, the service problems described in section I pose serious impediments to the ability of incarcerated people to communicate with their lawyers. For example, Bruce Teichman,

⁹⁸ Likewise, Madison, Wisconsin attorney Anthony Delyea, who takes cases on contract for the state public defender's office, bills calls from indigent clients to the state, which ends up paying the inflated rates. Steven Elbow, *Jailhouse Phone Shakedown; Corporations, Lockups and Prison Here Profit by Forcing Inmates to Make Collect Calls at Crushing Rates*, The Madison Capitol Times (Wis.) (Oct. 5, 2002).

⁹⁹ See Dennis Roberts Statement of Interest.

¹⁰⁰ See Crane Statement of Interest.

a member of the Coalition submitting these Comments, reports that his clients' calls were blocked from a private prison serviced by Evercom. When he contacted Evercom, he was told that his service had been interrupted for failure to pay his phone bill, despite the fact that Mr. Teichman's phone payments were current. The representative advised Mr. Teichman that, in addition to sending his payments, he had to call Evercom each month to notify them that he had made a payment. Before reconnecting service, Evercom requested proof of past payments, a tax identification number and other documents. If private prisons were prohibited from entering into exclusive contracts with phone service providers, market forces and competition would create disincentives to imposing this level of inconvenience and poor service on their customers.

In addition to interfering with the constitutionally protected right to counsel, the telephone policies challenged in the Wright Petition also hurt the ability of incarcerated people to prepare for their eventual re-entry into society. People in prison often need to contact lawyers in connection with civil litigation necessary to ensure that, when they are released, they will have families, homes and employment. For example, people in prison often need to contact their lawyers to arrange for visitation with their children or to fight threatened terminations of their parental rights, to fight threatened foreclosures on their homes, and to preserve their good credit histories.¹⁰¹ When people in prison are unable to contact their lawyers, their ability to participate in this litigation is impaired, with the result that they may lose their parental rights, their homes,

¹⁰¹ For examples of ways in which lawyers often play an essential role in permitting imprisoned parents to retain their relationships with their children, see Legal Services for Prisoners With Children, *Case Studies: Incarcerated Women With Young Children*, available at <http://prisonerswithchildren.org/issues/pwcpmp.htm>; Legal Services for Prisoners With Children, *Case Studies: Pregnant Women*, available at <http://prisonerswithchildren.org/issues/pwcpreg.htm> (both on file with the Brennan Center for Justice).

and other elements of a stable, productive life. This makes it much more difficult for them to reintegrate into society upon their release from prison.

V. Conclusion

For the reasons stated herein, the members of the Ad Hoc Coalition for the Right to Communicate respectfully request the Commission to address anticompetitive practices that result in excessive telephone service rates for people incarcerated in privately administered prisons. Such facilities should be required to permit competitive telephone service providers to offer services to incarcerated people in the manner described in the *Wright Petition* and supporting affidavit and should allow such providers to offer debit card or debit account services in addition to collect calling services. Moreover, the payment by telephone service providers of commissions to prison administrators should be prohibited. These steps are all necessary to facilitate reasonably priced telephone services to incarcerated people, which is vital to the penological and rehabilitative goals discussed above.

Respectfully submitted,

Ad Hoc Coalition for the Right to Communicate

By: 

Laura K. Abel

Patricia Allard

Kirsten D. Levingston

Kele Williams

Brennan Center for Justice

at New York University School of Law

161 Avenue of the Americas, 12th Floor

New York, N.Y. 10013

(212) 998-6730